IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3182 OF 2005

Sunil Shankar Nikam & Ors. ....Petitioners

V/s.

State of Maharashtra & Ors. ....Respondents

Mr.Vijay Gharat for the Petitioners.

Mr.M.H. Solkar, AGP for the State.

Mr.J.G. Reddy for Respondent No.2.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. This Petition takes exception to the order dated 17.2.2005 passed by the Appellate Bench of the Small Causes, Mumbai. Respondent No.3 had filed the eviction suit being RAE No.1672 of 1996, which was decided ex-parte on 30.9.2000 and a decree came to be passed against the Defendants to the said suit. Pursuant to the decree, Respondent No.3 came to know that the Petitioners are in occupation, and therefore filed obstructionist notice No.80 of 2001 for removal of the obstruction of the Petitioners herein. The said obstructionist notice came to be made absolute vide order dated 12.2.2002. It is the case of the

Petitioners that the said obstructionist notice was not served upon them, whereas it is the case of the Respondents that the said obstructionist notice was served upon them and the Petitioners have signed on the copy of the said obstructionist notice as having received the same. As indicated above, the said obstructionist notice came to be made absolute. The Petitioners therefore filed Misc.Notice No.439 of 2002 in the said RAE Suit No.1672 of 1996, for setting aside the said ex-parte order dated 12.2.2002. The said Misc.Notice filed by the Petitioners came to be made absolute by the learned Judge of the Small Causes vide his order dated 1.8.2002. The learned Judge directed the landlord to restore the possession of the obstructionist i.e. the Petitioners. Aggrieved by the said order dated 1.8.2002. Respondent No.3 herein filed an Appeal before the Appeal Bench of the Small Causes being Appeal No.175 of 2003 which came to be allowed and the order dated 1.8.2002 in Misc.Notice No.439 of 2002 came to be set-aside. It is this order which is subject matter of the above petition.

2. The Appellate Bench of the Small Causes while allowing the said Appeal has held against the Petitioners on the point of limitation and has observed that though the Petitioners were served with

the Obstructionist Notice No.80 of 2001, they failed to appear and after a considerable lapse of time have filed the said Misc.Notice which was beyond limitation. The Appellate Bench has also given a finding based on undisputed fact that the Petitioners are claiming though one Shivaji Pawar, who was neither the tenant nor a party to the RAE suit with the observation that he has no legal right title and or interest in the premises to file the said Misc.Notice for setting aside the order dated 12.2.2002. In so far as the Petitioners submission that since the property in question is declared as slum, and further the permission of the competent authority was required is concerned, the Respondents relied upon the judgment of a learned single Judge of this Court passed in Writ Petition No.5035 of 2000, which is quoted in the order of the Appellate Bench. It is an admitted position that the Petitioners are not claiming as a tenants but as the occupants. It is also an admitted position that the Petitioners are claiming through Shivaji Pawar. The locus of Shivaji Pawar qua the property has not been proved by the Petitioners by leading any evidence. In that view of the matter, no case for interference with the findings of the Appellate Bench of the Small Causes Court is made out under the writ jurisdiction under Article 227 of the Constitution of

India. The Petition is accordingly dismissed.

3. It is made clear that the observations made in this order will not come in the way of the Petitioners to adopt any remedy that would be available to the Petitioners under the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971.

Petition is dismissed.

(R.M. SAVANT, J)